GAHC010196852022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./60/2023

NATIONAL INURANCE COMPANY LIMITED.
HAVING ITS REGISTERED OFFICE AND HEAD OFFICE AT 3, MIDDLETON STREET, KOLKATA AND ITS REGIONAL OFFICE AT BHANGAGARH, G.S. ROAD, GUWAHATI- 781005 REPRESENTED BY THE CHIEF REGIONAL MANAGER, GUWAHATI REGIONAL OFFICE

VERSUS

ARATI DUTTA AND 4 ORS
W/O LATE MOHAN DUTTA, VILL.- DULIAPATHAR, P.O.- DULIAPATHAR, P.S.- NARAYANPUR, DIST.- LAKHIMPUR, ASSAM, PIN- 787052

2:MD. ABDUL SALAM
S/O LATE TAMIJUDDIN

VILL.- KAYAMORA

P.O.- BIHPURIA

P.S.- BIHPURIA

DIST.- LAKHIMPUR
ASSAM
PIN- 784161.

3:MD. MAZIBUR RAHMAN
S/O LATE ABDUL ZABBAR

VILL.- KAYAMORA

P.O.- BIHPURIA

P.S.- BIHPURIA

DIST.- LAKHIMPUR
ASSAM
PIN- 784161.

4:THE NEW INDIA ASSURANCE COMPANY LIMITED
NORTH LAKHIMPUR BRANCH
THAKUR SHIVRAM MARKET
A.T. ROAD
NORTH LAKHIMPUR
ASSAM
PIN- 787001.

5:PALASH DUTTA
S/O LATE MOHAN DUTTA

VILL.- DULIAPATHAR

P.O.- DULIAPATHAR

P.S.- NARAYANPUR

DIST.- LAKHIMPUR
ASSAM
PIN- 787052

Advocate for the Petitioner : MR T KALITA

Advocate for the Respondent : MR. P HAZARIKA (r-1,5)

Linked Case : I.A.(Civil)/566/2023

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Advocate for : MR T KALITA
Advocate for : MR. P HAZARIKA (r-1
5) appearing for ARATI DUTTA AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 27.3.2023

Heard Mr. T. Kalita, learned counsel for the appellant. Also present Mr. P. Hazarika, learned counsel for the respondent Nos1 and 5.

This is an appeal under Order 41 Rue 5 of the CPC praying for stay of operation of the impugned Judgment and Order dated 30.5.2022 passed by the learned Member, MACT, Lakhimpur at North Lakhimpur in MAC Case No. 46/2017.

The connected appeal has already been admitted. Mr. Kalita, learned counsel submitted that the appellant has a very good case for stay inasmuch as without there being any evidence, the learned trial court below came to a conclusion that two vehicles contributed to the accident. Accordingly, the appellant was also fastened with the liability. It is the contention of Mr. Kalita, learned counsel that it was not a case of the claimant that the vehicle insured with the present appellant was negligent or contributed to the accident. However learned Tribunal below without there being any evidence available on record held that the vehicle insured with the present appellant contributed to the accident, only on the ground that the accident was a head on collision.

Considered the submission, perused the impugned judgment.

As the appeal has already been admitted, the impugned Judgment and award dated 30.5.2022 passed by the learned Member, MACT, Lakhimpur at North Lakhimpur in MAC Case No. 46/2017 shall remain suspended subject to deposit of 50% of the awarded amount before the Registry of this court within a period of two weeks.

It is made clear that in the event, Court holds that there is no contributory negligence on the part of the vehicle insured with the present appellant, the respondent No.4 the insurer of other vehicle may be liable to refund the amount to the appellant, subject to final outcome of the appeal.

The claimant may withdraw the amount from the Registry of this court by filing an application before it and on such application being filed the Registry may allow to withdraw such amount as per extant norms.

IA stands disposed of.

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JUDGE

Comparing Assistant